

**REMARKS**

The Office Action mailed October 13, 2009 (“Office Action”) and cited reference have been received and considered. Claims 1-3, 5-18, 20-25, 27-47, 49-62, 64-69, 71-84, 86-88 and 93-98 are pending. Claims 1-3, 5-18, 20-25, 27-47, 49-62, 64-69, 71-84, 86-88 and 93-97 are rejected. Claim 98 has been added. No new matter has been added. Entry of the amendments to the claims is respectfully requested. Claims 19, 63, 85, and 89-92 were previously cancelled without prejudice or disclaimer. Reconsideration of the current rejections in the present application is also respectfully requested based on the following remarks.

Applicant has amended the claims as indicated above to clarify the embodiments of the claimed invention. Support for the amendments may be found, at least, for example on page 2, lines 1-11; page 12, lines 17-23; page 19, lines 1-14; page 21, lines 8-9; and page 33, lines 17-19.

**EXAMINER INTERVIEW**

Applicant wishes to thank Examiner Fields and Supervisor Abdi for the courtesies extended during the interview conducted on January 25, 2010. In accordance with MPEP § 713.04, Applicants are providing this Interview Summary. The Interview Summary includes the information listed in subsections (A) - (H) of MPEP § 713.04 under corresponding subsections herein.:

- (A) Exhibit. Not applicable.
- (B) Claims Discussed. The claims of record were generally discussed.
- (C) Prior Art. The art cited in the present Office Action was discussed.
- (D) Proposed Amendments. Applicants discussed proposed amendments to the claims.
- (E) Arguments. The arguments presented are those in this response.
- (F) Other Pertinent Matters. Not applicable.

(G) Results or Outcome of Interview. No agreement reached, although the Examiner agreed, after a review of the proposed amendments/remarks, to work with Applicants to forward prosecution.

(H) Interview by Electronic Mail. Not applicable.

**Rejections of Claims 1-3, 5-18, 20-25, 27-47, 49-62, 64-69, 71-84, 86-88 and 93-97 Under 35 U.S.C. § 103(a)**

On pages 3-9 of the Office Action, claims 1-3, 5-18, 20-25, 27-47, 49-62, 64-69, 71-84, 86-88 and 93-97 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 7,287,008 (“Mahoney”) in view of Official Notice. This rejection is respectfully traversed.

Under 35 U.S.C. § 103, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. In re Fine, 837 F.2d 1071, 1074 (Fed. Cir. 1988). There are four separate factual inquiries to consider in making an obviousness determination: (1) the scope and content of the prior art; (2) the level of ordinary skill in the field of the invention; (3) the differences between the claimed invention and the prior art; and (4) the existence of any objective evidence, or “secondary considerations,” of non-obviousness. Graham v. John Deere Co., 383 U.S. 1, 17-18 (1966); see also KSR Int'l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007). An “expansive and flexible approach” should be applied when determining obviousness based on a combination of prior art references. KSR, 127 S. Ct. at 1739. However, a claimed invention combining multiple known elements is not rendered obvious simply because each element was known independently in the prior art. Id. at 1741. Rather, there must still be some “reason that would have prompted” a person of ordinary skill in the art to combine the elements in the specific way that he or she did. Id. Also, modification of a prior art reference may be obvious only if there exists a reason

that would have prompted a person of ordinary skill to make the change. KSR, 127 S. Ct. at 1740-41.

*Mahoney Fails to Render Independent Claim 1 Obvious*

Independent claim 1, as amended, recites, *inter alia*:

specifying, through the computer processor, one or more triggering events associated with the at least one loan;

specifying, through the computer processor, one or more contacts to be notified after an occurrence of the one or more triggering events.

(emphasis added). The Examiner alleges that Mahoney discloses these elements. Applicant respectfully disagrees.

The Examiner cites to column 1, line 67 through column 2, line 67 of Mahoney as allegedly disclosing these elements. This portion of Mahoney, however, fails to disclose the recited claim elements. Indeed, other than this column-length citation, the Examiner fails to provide any more specific citation to where these elements may be found in this disclosure.

Applicant notes that Mahoney discloses “[t]he system should be capable of electronically communicating loan documents to business entity personnel at any point during the document preparation process.” Col. 2, lines 8-11. However, this disclosure merely states that documents are communicated to certain personnel but fails to recite that such documents are communicated or the personnel are “notified after an occurrence of the one or more triggering events,” as recited by the claimed invention.

In an effort to clarify the claimed invention and to further distinguish the claimed invention from Mahoney, Applicant has amended claim 1 as indicated above. Specifically, claim 1 has been amended to recite “A computer implemented method for ***construction*** loan administration” and “the at least one loan comprises an existing construction loan.” Applicant

has placed this amendment throughout the pending claims. Support for this amendment may be found at least in the present specification on page 12, lines 17-23.

Applicant notes that Mahoney discloses that

The present invention relates generally to the documentation and evaluation of real estate investments, and more particularly, to automated real estate loan origination and underwriting processes from initial customer contact to commitment. Col. 1, lines 5-10.

As such, as appreciated by one of ordinary skill in the art, Mahoney fails to include construction loans in its disclosure and is directed at loan origination and underwriting. One of ordinary skill in the art would appreciate that real estate loans, as disclosed by Mahoney, differ from “construction loans” as recited by the claimed invention and that an existing loan has already completed the origination and underwriting process.

*The Official Notice Regarding Interchanging Terms is Incorrect and is Traversed*

As admitted by the Examiner on page 4 of the Office Action:

Mahoney, however, does not expressly discuss a method wherein the one or more actions comprise at least submitting one or more draw request or specifically use the term “trigger.”

The Examiner takes Official Notice

that it is a notoriously old and well known fact that within a method and system as taught by Mahoney for loan organization and underwriting, that it would be obvious to include or interchangeably use the terms “draw,” “requests,” “draw requests,” and “trigger.”

Applicant respectfully traverses and requests that the Examiner produce documentary evidence of this alleged Office Notice. “Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are ***capable of instant and unquestionable demonstration as being well-known.*** [T]he notice of facts beyond the record which may be taken by the examiner must be

capable of such instant and unquestionable demonstration as to defy dispute.” MPEP § 2144.03(A) (citations and quotations omitted; emphasis added). Applicant respectfully submits that because the officially noticed facts are not beyond dispute, the usage of official notice is improper and must be withdrawn.

According to the MPEP, “if [Official Notice] is taken, the basis for such reasoning must be set forth explicitly. The examiner **must** provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge.” MPEP § 2144.03(B) (citing *In re Soli*, 317 F.2d 941, 946 (CCPA 1963); *In re Chevenard*, 139 F.2d 711, 713 (CCPA 1943) (emphasis added). The Examiner, however, has provided **no reasoning** or other support for this Official Notice to support the assertion that the alleged Official Notice is “notoriously old and well.” On this basis alone, the Official Notice is improper and must be withdrawn.

As Applicant can best understand the Official Notice, the Examiner is alleging that the four terms -- “draw,” “requests,” “draw requests,” and “trigger” -- are *interchangeable*. This unsupported allegation produces a nonsensical result -- especially when “trigger” is substituted for any of the other three terms.

On page 16 of the Office Action, the Examiner, in response to Applicant’s previous arguments, states

The Examiner notes that the Applicants do not understand the reasoning surrounding such remark. The Examiner’s comment regarding interchangeable terms pertains to the terms “draw,” “request” and “draw request.”

Assuming this to be the case, the rejection falls apart. The Examiner had relied on the Official Notice to equate “trigger” with the other terms; now, there is no prior art (or allegation) that the

prior art discloses the claimed “trigger.” Therefore, this rejection is improper and must be withdrawn.

Applicant respectfully submits that the Examiner has merely applied hindsight to Mahoney after reading the claims. As Applicant’s have previously noted, Mahoney’s disclosure differs from the claimed invention. As such, one of ordinary skill the art would not be motivated to make the alterations to Mahoney as alleged by the Examiner.

Even under the present obviousness standard as articulated in KSR Int’l Co. v. Teleflex Inc., 127 S. Ct. 1727 (2007), hindsight must be guarded against:

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. See Graham, 383 U.S., at 36, 86 S.Ct. 684 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “guard against slipping into the use of hindsight” (quoting Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co., 332 F.2d 406, 412 (C.A.6 1964))).

KSR, 127 S.Ct. at 1742. KSR further holds that “[a]lthough common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.” Id. at 1741.

KSR abandoned the rigid teaching, suggestion, or motivation test (“TSM”) in favor of a more flexible approach. Id. However, “[o]ne of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” Id. at 1742. Here, the Examiner has failed to prove that such a known problem existed for which Applicant’s claims provide an obvious solution.

Additionally to clarify the claimed invention, Applicant has amended claim 1 to recite, *inter alia*, “wherein the draw requests are based on one or more stages of construction.” Applicant has amended the other pending claims in a similar fashion. Applicant submits that Mahoney and Official Notice fail to disclose this element.

Accordingly, Applicant submits that, at least for claim 1, the Examiner has failed to present a *prima facie* case of obviousness.

**The Claims Adequately Recite the Limitations**

On page 16, the Examiner asserts that

Applicants need to adequately recite the claim limitations in view of the meanings laid out in the specification. The Examiner notes that the Official Notice taken has been done so in view of terminology, not for prior art replacement.

Applicant respectfully disagrees. Applicant submits that the claim language is supported by the specification. There is no requirement that the claim language must use the exact terminology used in the specification. However, Applicant notes that in the claimed invention, the claims recite the same language used in the specification, e.g., “draw” and “trigger.” Accord MPEP § 2173.

**Mahoney in view of Official Notice Fails to Render Independent Claims 23, 45, 67, and 93-96 Obvious**

Independent claims 23, 45, 67, and 93-96 recite similar elements to independent claim 1, therefore the arguments above apply to claims 23, 45, 67, and 93-96 also. These claims have also been amended in similar manner to claim 1. Therefore, claims 23, 45, 67, and 93-96 are allowable at least for the reasons given for independent claim 1. Applicant submits that claims 23, 45, 67, and 93-96 are allowable over the cited art, alone or in combination. Applicant respectfully requests the withdrawal of the rejections thereof.

*Mahoney in view of Official Notice Fails to Render Independent Claim 97 Obvious*

Independent claim 97 recites, among other things:

a draw module for:

- (a) submitting one or more draw requests against the at least one loan, wherein the draw requests comprise one or more of a line item draw, an existing residential draw, or a new unit start draw;
- (b) processing the draw request; and
- (c) sending a draw package request, wherein the draw package request comprises one or more of a request for invoices and lien waivers.

On page 11, the Office Action rejects claim 97 under the same basis as claim 1. However, independent claim 97 is distinguishable from independent claim 1. The deficiency of Mahoney regarding draw requests and construction loans has been noted above. Therefore, Applicant submits that claim 97 is patentable over the cited art and requests the withdrawal of the rejection thereof.

*The Dependent Claims are Allowable at Least by Virtue of their Dependency on the Independent Claims*

Claims 2, 3, 5-18, 20-22, 24, 25, 27-44, 46, 47, 49-62, 64-66, 68, 69, 71-84, and 86-88 are dependent upon at least one of independent claims 1, 23, 45, and 67. Therefore, since claims 1, 23, 45, and 67 are allowable over Mahoney as discussed above, claims 2, 3, 5-18, 20-22, 24, 25, 27-44, 46, 47, 49-62, 64-66, 68, 69, 71-84, and 86-88 are allowable at least by virtue of their dependency upon at least one of independent claims 1, 23, 45, and 67. Furthermore, new claim 98 is allowable at least based upon its dependency on claim 1.

Therefore, based on the above arguments, Applicant respectfully submits that all claims are in condition for allowance and indication thereof is respectfully requested.

**CONCLUSION**

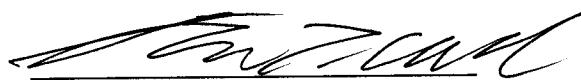
In view of the foregoing amendments and arguments, it is respectfully submitted that this application is now in condition for allowance. If the Examiner believes that prosecution and allowance of the application will be expedited through an interview, whether personal or telephonic, the Examiner is invited to telephone the undersigned with any suggestions leading to the favorable disposition of the application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

Date: 3/1/10



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